IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/08/2003

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.275 of 1995

1. Kolandaiswamy
2. Thangaraj
3. Murugan
4. Kamaraj .. Appellants

-Vs-

State rep. by Inspector of
Police, Thiruppur North
Police Station, Coimbatore
Cr. No.782/93 .. Respondent

This criminal appeal is preferred under Sec.374 of The Code of Criminal Procedure against the judgment and conviction passed by the I Additional Sessions Judge, Coimbatore in S.C.No.21/94 on 7.2.93.

!For Appellants : Mr.P.Venkatasubramanian
for A-1, A-2 and A-4

No appearance for A-3

^For Respondent : Mr.V.M.R.Rajendran
Additional Public Prosecutor

:JUDGMENT

(Judgment of the Court was delivered by N.DHINAKAR, J.)
The appellants four in number, who in the judgment will be referred to as accused 1 to 4 in the same order as they were arrayed before the learned I Additional Sessions Judge, Coimbatore, challenge the conviction and sentence.

2. They were tried before the learned Sessions Judge under Sec.302 read with 34 of I.P.C. on the allegations that between 3.15 a.m. and 3 .30 a.m. on 4.6.1993, A-1 and A-2 travelled in a moped bearing Registration No.TCI 2734, and A-3 and A-4 travelled in another moped bearing Registration No.TN 33A 7293, and on reaching the tea stall of the deceased Duraivelan, A-2 and A-3 alighted from the moped; and that they inflicted indiscriminate stab

injuries leading to his death. The learned trial Judge on the oral and documentary evidence found the accused guilty and sentenced each one of them to imprisonment for life, which is being challenged in this appeal.

3. The facts necessary to dispose the appeal are as follows:
A-1 is the father of P.W.1, and P.W.2 and A-4 are the paternal aunt's sons of P.W.1. P.W.4 is the elder brother of the deceased. P.W.3 is the wife of the deceased. It is the case of the prosecution that the deceased fell in love with P.W.3 and ma d her against the wishes of the family members of P.W.3; and that A-1 the father of P.W.3 and others were against the said marriage because P.W.3 and the deceased belonged to different communities. This is said to be the motive for the occurrence which took place. The deceased was running a tea stall under the name and style of "Anbu Tea Stall". P.W.5 who was working in a company which was engaged in manufacturing polythene bags, was returning to his house at about 3.00 or 3.30 a.m. on 4.6.1993, and when he was near a Departmental Store, he saw a TVS moped overtaking him, and on the said moped two persons were seen sitting. A few moments thereafter, another moped also reached the place carrying two persons. P.W.5 heard the four persons shouting "he is alone, he must not be left alive". P.W.5 proceeded towards a lorry service shed to find out whether a consignment consigned to his company has arrived and saw two of the persons who came in two mopeds, going near a person, who was sleeping at the tea stall, and stabbing him. Thereafter he saw the person who suffered the stab injuries, rushing towards a Timber Mart and asking for help. But, the person who was sleeping near the Timber Mart, went away, and thereafter, the person who suffered stab injuries, ran towards a private nursing home belonging to P.W.1. P.W.5 left the scene of occurrence and went away.

4. P.W.1 a Doctor by profession, who was running a nursing home called Priya Poly Clinic at Perumanallur Road, Tiruppur, has woken up from his bed at about 4.30 a.m. on hearing the phone call. He was informed over phone by his watchman P.W.2 that a dead body is seen near the consulting room. P.W.1 rushed to the clinic and found a dead body near the door of his consulting room, and his duty nurse informed him that the person entered the private clinic and fell down dead near the doorstep. P.W.1 went to Tiruppur Police Station and gave a complaint to P.W.22, the Sub Inspector at 6.30 a.m. The said complaint is Ex.P1. P.W.22 registered a case in Crime No.782/93 under Sec.302 of I.P.C. against unknown accused, and investigation was taken up by P.W.23, the Inspector of Police.

5. P.W.23 on taking up investigation in the case proceeded to the scene of occurrence after obtaining a copy of the printed First Information Report at the Police Station. He reached the scene of occurrence at 7.30 a.m. An observation mahazar Ex.P19 was prepared. He drew a rough sketch Ex.P29. He conducted inquest over the dead body of Duraivelan between 8.30 a.m. and 10.30 a.m. in the presence of panchayatars, and at the time of inquest, he questioned P.Ws.1 to 4 and recorded their statements. Ex.P30 is the inquest report. P.W.23 thereafter, issued Ex.P14 a requisition to the Doctor and handed over the dead body to P.W.20, a Police Constable with a direction to take the dead body to the hospital for autopsy.

6. On receipt of the requisition, P.W.14, an Assistant Surgeon at Government Head Quarters Hospital, Coimbatore, conducted autopsy on the dead body and found the following injuries.
1) A punctured wound is seen 1" above the upper border of the left scapula at its middle 1" x +" x +".
2) A punctured wound is seen at the midial border of the left scapula around its middle 1" x ," x s".
3) A punctured wound is seen about 1" above the lower and of left scapula s" x ," x ,".
4) A punctured wound is seen over the lateral border of the left scapula at the middle ," x +" x +".
5) A punctured wound is seen in the middle of the left side of the neck +" x ," x 1 +".
6) A punctured wound is seen over the middle of the lateral border of the back of the neck on the left side +" x ," x s".
7) A punctured wound is seen about 2" in front of left ear 1" x ," x ,".
8) A punctured wound is seen over the lateral aspect of the elft side abdomen about 3 +" above the iliac crest +" x ," x +".
9) A punctured wound is seen about +" lateral and down to the injury No.(8) +" x ," x ,".
10) An abrasion wound is seen above 4" below the lower end of left scapula 1 ," x ,".
11) An incised wound is seen over the centre of the Back at the head 1 ," x ," x bone deep.
12) A punctured wound is seen over the lateral aspect of left side of the back of the head ," x ," x bone deep.
The Doctor issued Ex.P15, the postmortem certificate with his opinion that the deceased would have died of shock and haemorrhage due to multiple injuries about 10 to 12 hours prior to autopsy.

7. P.W.23 in the meantime, continuing with his investigation, seized M.Os.6 and 7 bloodstained earth and sample earth respectively under a mahazar Ex.P20. He seized M.Os.8 to 11 under a mahazar Ex.P21. He formed a special party to arrest the accused. On 5.6.93 he questioned some more witnesses and recorded their statements, and further investigation was taken up by his successor P.W.24 on 6.6.93. P.W.24 on taking up further investigation in the crime from P.W.23, verified the investigation conducted by his predecessor and questioned P.Ws.5 to 9 and recorded their statements. He took steps to arrest the accused. On 12.6.1993, he questioned P.Ws.17 and 18 and recorded their statements. On an information received on 13.6.93 at about 7.30 a.m., he arrested A-1 and A-2 in the presence of P.W.13. The first accused was questioned, and the admissible portion of the statement of the first accused is Ex.P10, and Ex.P11 is the admissible portion of the statement of A-2. They were recorded in the presence of P.W.13 and another. The first accused took the policy party to his house and produced M.O.1 moped bearing Registration No.TN 33A 7293, and the same was seized under a mahazar Ex.P12. The second accused took the policy party and produced M.Os.4 and 5 which were seized under a mahazar Ex.P13 attested by the same witnesses. P.W.13 and another witness who attested the mahazars were questioned, and their statements were recorded. As there was an injury on the finger of A-2, he was sent to the

Doctor P.W.11 who examined him and found the following injuries which he noted in Ex.P4, the wound certificate.
1) A cut injury of 1.5 cm x 1 cm x 1 cm of Triangular shape in the base of (R) Index.
2) Abrasion of 1 cm length at the middle of (R) middle finger.

8. A-1 and A-2 and the material objects were sent to Court. On 14.6 .93, on an information, P.W.24 the Inspector of Police proceeded to Perumanallur Road, Poyampalayam, and in front of Door No.134, A-3 and A-4 were arrested in the presence of P.W.12. A-3 and A-4 gave statements, and the admissible portion of the statement given by A-3 is Ex.P31, and Ex.P7 is the admissible portion of the statement given by A-4. The statements were attested by P.W.12. A-3 took the police party to his house and produced M.O.3 bloodstained knife, and the same was seized under mahazar Ex.P8. A-4 took the police party and produced M.O.2 a moped bearing Registration No.TCI 2734, and the same was seized under a mahazar Ex.P9 attested by witnesses. The material objects and A-3 and A-4 were sent to Court. On 16.6.93, the postmortem certificate was obtained from the Doctor P.W.14. The material objects seized in the case were sent to Court with a requisition Ex.P23 to forward them for analysis. Thereafter, he gave a requisition Ex.P2 to the Judicial Magistrate P.W.10 to conduct the Test Identification Parade of A-1 to A-4.

9. P.W.10, the Judicial Magistrate on receipt of the requisition Ex.P2, directed the Jail Authorities to produce the accused before him on 25.6.1993, and accordingly, they were produced. The Judicial Magistrate took all precautions while conducting the Test Identification Parade, and the accused 1 to 4 were identified by P.Ws.5, 7, 8 and 9. The Judicial Magistrate questioned the accused whether they have any complaints, and A-3 complained to the Magistrate that they were shown to the witnesses, when they were at the Police Station. The proceedings prepared by the Magistrate as regards the Test Identification Parade conducted by him are Ex.P3.

10. P.W.24 continuing with his investigation, questioned P.Ws.15 and 16 on 22.10.93. He also questioned P.W.11 on the same day, and the final report was filed against the accused, after the completion of the investigation.

11. The accused were questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances appearing against them. They denied all the incriminating circumstances. They did not examine any witness on their side.

12. The learned Counsel appearing for the appellants/accused contends that P.W.5 being the only eyewitness and he having been examined only on 6.6.93, it is not safe to act upon his evidence, more so, when there is no material to indicate as to how the Police Officer knew that P.W.5 was an eyewitness to the incident. He submits that P.Ws.5 to 9, the five important witnesses, on which the prosecution relied on to bring home the guilt of the accused, were allegedly examined on 6 .6.93 after the investigation was taken up by P.W.24; and that the investigation conducted by P.W.24 and the evidence of P.W.24 do not establish as to how he knew that they were relevant witnesses

to the incident and much less the source from which he came to know that P.W.5 was a witness to the occurrence.

13. On the above contentions, we have heard the Additional Public Prosecutor.

14. The Postmortem Doctor who conducted autopsy, was examined to establish the cause of death. According to him, he found as many as 12 injuries on the dead body, and he noted them in the postmortem certificate Ex.P15, and the injuries 1 to 9, 11 and 12 could have been caused by using M.Os.3 and 5, and the injury No.10 could have been on account of the injured coming into contact against rough and hard surface, and all the injuries could have resulted in his death. In view of the evidence of the Doctor, we hold that the deceased died on account of homicidal violence. The said fact was also not disputed before the trial Court. Nor is it disputed before this Court.

15. The prosecution before the trial Court examined P.W.5 as a witness to the occurrence. According to him, he was returning from his factory, where he was working, and saw the incident. In his evidence, he has deposed that when he was returning home, he wanted to verify whether a consignment despatched to his company has arrived at the Parcel Office, which was on the way, and when he was proceeding towards the Parcel Office, he saw two persons coming in a moped, and later two others came in another moped. In the trial Court, he identified the four accused as the persons whom he saw at about 3.00 or 3.30 a.m. on that day. It is his further evidence that A-2 and A-3 got down from the vehicle and went near the tea stall and thereafter, stabbed the person who was sleeping there. He has further deposed that the injured on receiving the injuries rushed towards the Timber Mart which was nearby, and sought the help of a person who was sleeping there, and not getting any help, he went towards the nursing home. The question that is to be decided is whether the evidence of P.W.5 can be accepted and acted upon. The occurrence, according to the prosecution, took place on 4.6.1993. If P.W.5 was a witness to the incident, then nothing prevented him from going to the Police Station to give a complaint about his seeing the occurrence. He did not inform anyone, but he went away to his house. According to P.W.24, the Investigating Officer, who took further investigation from P.W.23, on 6.6.93, P.W.5 was examined on that date, which means that P.W.24 immediately on taking up investigation in the crime on 6.6.93 traced P.W.5 and examined him, and his statement was recorded on the said date. P.W.24 in his evidence did not say as to how he came to know that P.W.5 was a witness to the incident, since till 6.6.93, no witness whispered during the course of investigation conducted by P.W.23 that the occurrence was witnessed by P.W.5. It is not even the case of the prosecution that P.W.5 informed others; and they in turn informed the police for the Investigating Officer P.W.24 to trace P.W.5 and examine him. His statement though was allegedly recorded on 6.6.93, was received by the Magistrate only on 15.6.1993 i.e. much after the arrest of A-1 to A-4 , since according to the prosecution, A-1 and A-2 were arrested on 13 .6.93, and A-3 and A-4 were arrested on 14.6.93.

16. P.W.5 is not the only witness, who was examined on 6.6.93, but

P.Ws.8 and 9 were also examined on the same day.

According to P.Ws.8 and 9, both A-3 and A-4 were seen by them at about 3.00 or 4.00 a.m. on 3.6.93, when they were returning from night shift, and A-3 and A-4 were seen travelling in a moped bearing Registration No.TCI 2734. The evidence of P.W.5 indicates that on the date, when he saw the accused, he noted the registration number of one of the mopeds, and he also mentioned the same in his evidence before the trial Court. He stated that one of the mopeds had a Registration No.TN 33A 7293. If P.W.5 was really examined on 6.6.93, then the Investigating Officer would have certainly gone to the Regional Transport Office to find out the ownership of the moped on 6.6.93 or at least on 7.6.93. But, he did not do so. The evidence of P.W.15, the Motor Vehicle Inspector shows that he was questioned by the Investigating Officer only on 23.6.93. This creates a grave suspicion in the mind of the Court namely whether P.W.5 was really examined on 6.6.93. If, as we observed earlier, P.W.5 was examined on 6.6.93 and had given the registration number of one of the mopeds, then any Officer worth his salt would have gone to the Regional Transport Office to find out the ownership of the said moped. But, the Officer did not do so, which shows that P.W.5 could have been examined much later i.e. long after the arrest of A-1 to A-4. The same also shows that the Officer could not have had any knowledge about the use of two mopeds by the accused on the date of incident, and there was no material before him to come to know about the said fact on 6.6.93.

17. At this juncture, we cannot, but refer to Ex.P12, the mahazar prepared for the seizure of M.O.1 namely the moped bearing Registration No.TN 33A 7293 as well as Ex.P9, the mahazar prepared for the seizure of M.O.2 namely the moped bearing Registration No.TCI 2734. According to the prosecution, A-1 and A-2 were arrested on 13.6.93, and on the statement given by A-1, the moped M.O.1 was seized under the mahazar Ex.P12. A perusal of Ex.P12 shows that initially the date of recovery is seen mentioned therein as 6.6.93, which was altered to 13.6.93 namely the date on which A-1 and A-2 were alleged to have been arrested. Similarly, Ex.P9, the recovery mahazar for M.O.2 also shows that there is alteration in the date of recovery of M.O.2 by correcting the date 6.6.93 as 14.6.93, the date on which A-3 and A-4 were arrested. The mahazars Exs.P9 and P12, therefore, show that the Investigating Officer has prepared the mahazars even on 6.6.93, the date on which the statements of P.Ws.5, 8 and 9 were alleged to have been recorded, and later, probably finding that A-1 and A-2 have not been shown arrest, have corrected the date in the mahazars by making it appear that M.O.1 was recovered on 13.6.93, and M.O.2 was recovered on 14.6 .93. This shows the dishonesty in investigation on the part of the investigating agency, and we do not, therefore, attach any importance either to the evidence of P.W.5 or to the evidence of P.Ws.8 and 9.

18. Once we reject the evidence of P.Ws.5, 8 and 9, the subsequent identification of the accused by these witnesses at the Test Identification Parade conducted by the Magistrate is of no use, since the materials indicate that P.Ws.5, 8 and 9 were brought into the case as witnesses on 6.6.93 on which date P.W.24 took up investigation. The investigation which according to the prosecution, was in slumber till 23 .6.93, suddenly became active, and

P.W.24 Investigating Officer was able to trace P.Ws.5, 6 and 9 and examine them on the same date, when he took over the investigation, and the materials do not show, as we observed earlier, as to how he came to know that P.W.5 was near the scene of occurrence and saw the incident; and that how he was able to trace him, and similarly as to how the Police Officer knew that P.Ws.8 and 9 saw A-3 in a moped and therefore, they have to be traced for the purpose of recording their statements. Th e investigation as we stated earlier, is not only unsatisfactory, but thoroughly dishonest, and we do not attach any importance to the evidence of P.Ws.5, 8 and 9. There is no other material against the accused, and hence, we find it difficult to uphold the conviction of the appellants/accused.

19. In the result, this criminal appeal is allowed, and the appellants/accused are acquitted of the charge levelled against them. It is reported that the appellants are on bail. Their bail bonds shall stand cancelled.

Index: Yes
Internet: Yes

To:

1) The I Additional Sessions Judge, Coimbatore.
2) The I Additional Sessions Judge, Coimbatore,
The Principal Sessions Judge, Coimbatore.
3) The Judicial Magistrate No.I, Tiruppur.
4) The Judicial Magistrate No.I, Tiruppur,
The Chief Judicial Magistrate, Coimbatore.
5) The District Collector, Coimbatore.
6) The D.G.P., Chennai.
7) The Public Prosecutor, High Court, Madras.
8) The Superintendent, Central Prison, Coimbatore.
9) The Inspector of Police, Tiruppur North Police Station,
Coimbatore.

nsv/